



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
19-02-2007
(32440-32437)

32440

S. Muna

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergci Alekseevich Egorov

Registrar: Adama Dieng

Date: 19 February 2007

THE PROSECUTOR
v.
Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA
Case No.: ICTR-98-41-T

2007 FEB 19 12:04
JUDICIAL RECORDS/ARCHIVES
RECEIVED

**DECISION ON BAGOSORA DEFENCE MOTION TO RECALL WITNESS
FRANK CLAEYS FOR ADDITIONAL CROSS-EXAMINATION**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

bl

32437

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Bagosora “Requête ... visant le rappel du témoin Frank Claeys pour contre interrogatoire additionnel”, filed on 30 January 2007;

CONSIDERING the Prosecution Response, filed on 5 February 2007, and the Bagosora Reply, filed on 13 February 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Bagosora Defence seeks the recall of Prosecution Witness Frank Claeys, a Belgian Captain assigned to the 1993-94 United Nations Assistance Mission in Rwanda (UNAMIR), on the grounds that Amadou Deme, another UNAMIR member, recently made a statement which calls into question the credibility of an informant relied on by UNAMIR and whose information was the core component of Claeys’ testimony before the Chamber.¹ The Defence believes that the new information, upon which it wishes to cross-examine Claeys, severely undermines the credibility of the informant, named “Jean-Pierre”, and weakens the Prosecution theory that a genocidal plan, involving the four Accused in this case, was developed in the months and years preceding 6 April 1994.² In light of the fact that at least nine paragraphs in the Indictment directly or indirectly relate to the informant’s disclosures, the Defence asserts it will be irreparably harmed by not being able to present evidence on this critical point.³

2. The Prosecution opposes the request to recall Claeys, arguing that the informant’s credibility was an issue during Claeys’ testimony and that the Defence teams took a significant amount of time to cross-examine on this point. According to the Prosecution, the Defence has not demonstrated any real prejudice, and the recall is improper because the evidentiary phase of the trial is complete.⁴

DELIBERATIONS

3. The Chamber has previously enunciated the standard for recalling a witness:

A party seeking to recall a witness must demonstrate good cause, which previous jurisprudence has defined as a substantial reason amounting in law to a legal excuse for failing to perform a required act. In assessing good cause, the Chamber must carefully consider the purpose of the proposed testimony as well as the party’s justification for not offering such evidence when the witness originally testified. The right to be tried with undue delay as well as concerns of judicial economy demand

¹ Motion, paras. 3-5, 10, 12-13, 15-20.

² Motion, paras. 20-22; Reply, paras. 3-4.

³ Motion, para. 24; Reply, para. 5.

⁴ Reponse, para. 2.

32438

that recall should be granted only in the most compelling of circumstances where the evidence is of significant probative value and not of a cumulative nature.⁵

4. Where the Defence seeks to question a witness on inconsistencies between testimony and any declarations subsequently obtained, it must demonstrate that the inability to put these inconsistencies to the witness will cause prejudice to the Accused. The Chamber will decide whether there is a need for the witness' explanation of the inconsistency or whether the inconsistency is minor or self-evident so that recall is not necessary.⁶

5. After a review of the transcripts of Claeys' testimony on 7 and 8 April 2004, the Chamber does not find that the Bagosora Defence has demonstrated good cause for recalling the witness. The Prosecution examined Claeys for approximately 70 minutes, and the Bagosora Defence cross-examined him for over 220 minutes. The total cross-examination by the Defence took nearly eight hours. The testimony focused on the disclosures made to the UNAMIR mission by the informant "Jean-Pierre" and the manner in which such information was confirmed and/or used by UNAMIR. On cross-examination by the Bagosora Defence, Claeys stated that neither he nor other members of UNAMIR verified all of the details and information given to them by the informant.⁷ Claeys testified that he felt the informant was acting in "good faith".⁸

6. The Bagosora Defence cross-examined the witness on whether the informant, an alleged member of the MRND political party, had contacts with a man named Karenzi, a liaison officer between the RPF and UNAMIR. Claeys responded in the affirmative but noted that he did not find it "surprising" that the two were in contact.⁹ The Defence's proposed recall would be for the purpose of asking Claeys if he told Amadou Deme in 1994 that the informant "Jean-Pierre" and Major Karenzi knew each other "very well".¹⁰ However, the issue of whether the two individuals knew each other was already raised at trial, and the Defence had the opportunity to pursue the issue. The Chamber finds the recall of the witness to clarify this additional element unwarranted.

⁵ *Bagosora et al.*, Decision on the Prosecution Motion to Recall Witness Nyanjwa (TC), 29 September 2004, para. 6. See also *Bagosora et al.*, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination (TC), 19 September 2005, para. 2; *Simba*, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination (TC), 28 October 2004, para. 5.

⁶ *Bagosora et al.*, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination (TC), 19 September 2005, para. 3.

⁷ E.g., T. 7 April 2004 pp. 65-68.

⁸ T. 7 April 2004 p. 65.

⁹ T. 7 April 2004 pp. 79-80.

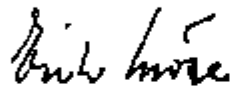
¹⁰ Motion, para. 16.

32437

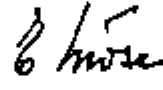
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 19 February 2007



Erik Mese
Presiding Judge



Jai Ram Reddy
A.A. Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Homelouw	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber I Judge Mose Judge Reddy Judge Egorov (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. BAGOSORA ET AL.			Case Number: ICTR-98-41-T
Dates:	Transmitted: 19 FEBRUARY 2007		Document's date: 19 FEBRUARY 2007	
No. of Pages:	4		Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	DECISION ON BAGOSORA DEFENCE MOTION TO RECALL WITNESS FRANK CLAEYS FOR ADDITIONAL CROSS-EXAMINATION			
Classification Level:	TRIM Document Type:			
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence	<input type="checkbox"/> Submission from non-parties
<input type="checkbox"/> Confidential	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal	<input type="checkbox"/> Submission from parties
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book	<input type="checkbox"/> Accused particulars
	<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party will be submitting the translated version(s) in due course in the following language(s):

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input checked="" type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
--	---

2007 FEB 19 12:04
 JUDICIAL RECORDS ARCHIVES
 RECEIVED

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: